

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**FLOYD BROWN,**  
**No. K53884,**

**Plaintiff,**

**vs.**

**WARDEN STEPHEN B. DUNCAN,**

**Defendant.**

**Case No. 15-cv-00248-NJR**

**MEMORANDUM AND ORDER**

**ROSENSTENGEL, District Judge:**

Plaintiff Floyd Brown is an inmate currently housed in Lawrence Correctional Center. He filed a blunderbuss civil rights complaint pursuant to 42 U.S.C. § 1983: *Brown v. Godinez*, Case No. 15-cv-00115-JPG (S.D. Ill. Feb. 4, 2015). By order dated March 5, 2015, Count 4 seeking injunctive relief relative to the conditions of confinement was severed from that case and now serves as the basis for the present case. Plaintiff was given until March 31, 2015, to opt into the new case, or to move for voluntary dismissal. He was warned that failure to meet the prescribed deadline could result in the dismissal of the new case with prejudice, and that the \$400 filing fee would be collected pursuant to the procedures in 28 U.S.C. § 1915(b).

The March 31 deadline has come and gone without any response from Plaintiff. He has failed to comply with a court order, and the Court concludes that Plaintiff has failed to prosecute this action. Therefore, dismissal of this action is warranted pursuant to Federal Rule of Civil Procedure 41(b). Whether dismissal is with or without prejudice is a matter of judicial discretion. Because a colorable Eighth Amendment claim has been stated, and considering Plaintiff's *pro se* status, this action will be dismissed *without* prejudice. However, the \$400

filing fee will be assessed in accordance with the procedures set forth in Section 1915(b)(2).

**IT IS THEREFORE ORDERED** that, pursuant to Federal Rule of Civil Procedure 41(b), this action is **DISMISSED without prejudice**. Judgment shall enter accordingly and this case will be closed. This dismissal shall not count as one of Plaintiff's allotted "strikes" under 28 U.S.C. § 1915(g). A separate order will issue regarding collection of the \$400 filing fee.

**IT IS SO ORDERED.**

**DATED: April 7, 2015**

The image shows a handwritten signature in black ink that reads "Nancy J. Rosenstengel". The signature is written in a cursive style. Below the signature, there is a faint circular seal of the United States District Court for the District of New Jersey.

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**NANCY J. ROSENSTENGEL**  
**United States District Judge**